



Iowa Department of Administrative Services
Human Resources Program Delivery Services ■ Labor Relations Bureau

LABOR RELATIONS INFORMATION AND NEWS
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QUIET PLEASE!

A survey of 2,318 employed adults released by Randstad USA in 2006 found the following behavior to be among the top pet peeves in the workplace:

- ☑ 91% said profanity is unacceptable in the workplace.
- ☑ 44% said condescending tones are one of the biggest pet peeves.
- ☑ 37% said public reprimands.
- ☑ 32% said loud talkers.
- ☑ 30% said cell phones ringing at work.
- ☑ 22% said the use of speakerphones in public areas.
- ☑ 11% said colleagues engaging in personal conversations in the workplace.

Employment Law Updates

ADA/Title VII: On May 23, 2007, the U.S. Equal Employment Opportunity Commission (EEOC) issued Notice No. 915.002, *Enforcement Guidance: Unlawful Disparate Treatment of Workers with Caregiving Responsibilities*. The guidance provides examples to help employers avoid EEOC charges and litigation in this area. For a copy of the notice, go to: www.eeoc.gov/policy/docs/caregiving.html

ADEA: On July 6, 2007, the EEOC issued new regulations clarifying the Age Discrimination in Employment Act (ADEA). The EEOC no longer prohibits employers from favoring an older employee over a younger employee, even when both employees are protected by the Act. The new language also provides guidance regarding help wanted notices and advertisements. For the ADEA (not yet updated with this new language), go to: www.access.gpo.gov/nara/cfr/waisidx_06/29cfr1625_06.html

EEO: Under a recent decision from the U.S. Court of Appeals for the Sixth Circuit, comments about an employee's foreign accent may be considered direct evidence of discrimination based on national origin. *Rodriguez v. FedEx Freight East, Inc.*, No. 06-1988 (June 27, 2007). For a copy of the decision, go to: www.ca6.uscourts.gov/opinions.pdf/07a0246p-06.pdf For the EEOC's compliance guidance on this issue, go to: www.eeoc.gov/policy/docs/national-origin.html#VA

FMLA: On June 28, 2007, the U.S. Department of Labor (DOL) published a report summarizing more than 15,000 comments received in response to the DOL's Request for Information on December 1, 2006, regarding the effectiveness of FMLA regulations. Many of the comments focused on the problem created by the use of intermittent leave, and dissatisfaction with the current medical certification process. For a copy of the report, go to: www.dol.gov/esa/whd/FMLA2007FederalRegisterNotice/07-3102.pdf

Investigations: The U.S. Court of Appeals for the Eleventh Circuit recently dismissed a sexual harassment lawsuit against an employer on the basis that federal courts should focus on the "reasonableness of the investigation" and avoid "micro-managing internal investigations." The court's decision provides guidance for employer's dealing with a "he said/she said" case, and highlights that the employer's duty is to stop the alleged harassment, not to placate every demand of the alleged victim. *Baldwin v. Blue Cross/Blue Shield of Alabama*, No. 05-15619 (March 19, 2007). For a copy of the court decision, go to: www.ca11.uscourts.gov/opinions/ops/200515619.pdf

USERRA: A federal district court judge in Kentucky recently held that a former Marine could sue his employer for both discrimination and harassment under the federal Uniformed Services Employment and Reemployment Rights Act (USERRA). In this case, the court held "the right to be free from a hostile work environment, broadly construed, is a benefit of employment," thereby allowing the employee to pursue a hostile work environment harassment claim under USERRA. *Steenken v. Campbell County*, No. 04-224-DLB (March 15, 2007). For further discussion on this court decision, go to: <http://www.ogletreedeakins.com/publications/index.cfm?Fuseaction=PubDetail&publicationid=184>

U.S. Supreme Court Decisions from the 2006-2007 Term:

- *Long Island Care at Home, Ltd. v. Coke*, No. 06-0593 (June 11, 2007) – The court held that in-home health care providers are exempt from the minimum wage and overtime requirements of the Fair Labor Standards Act (FLSA), even those workers who are employed by a third party.
- *Beck v. PACE International Union*, No. 05-1448 (June 11, 2007) – The court held that a bankrupt employer did not breach its fiduciary duties when it chose to purchase an annuity to terminate its pension plans rather than merge the plans into the union's multi-employer pension fund.
- *Davenport v. Washington Education Association*, No. 05-1589 (June 14, 2007) – The court reviewed the constitutionality of a Washington state law that requires a union to obtain the "affirmative authorization" of non-members before spending any part of their agency fees for political purposes. The court held that the law is simply a restriction on the union's exercise of its "extraordinary power" provided by the state to charge fees to public employees it represents who do not wish to join the union.

Sample GRIP Case:

The following case was recently heard at GRIP, and is a good example of a thorough investigation and presentation:

A Resident Treatment Worker (RTW) was terminated for abuse for using profanity in a threatening manner with a resident, and the Union grieved her termination. The RTW neither denied nor admitted making the statement, stating only that she did not recall. The investigation into the incident yielded two employee witness statements that supported the allegation. The RTW had previously received a 5-day suspension and a final warning for similar misconduct.

Management presented its case clearly and concisely, and remained composed throughout the hearing. Management's documentation included a copy of DIA's definitions of abuse, copies of relevant State and agency policies, and copies of witness statements, with pertinent portions highlighted. Additionally, Management presented the Panel with copies of the RTW's past performance evaluations, which indicated the RTW had previously been counseled regarding her tone of voice with residents. Management took notes during the Union's presentation, and provided appropriate responses to each of the Union's points.

Ultimately, the GRIP Panel issued a decision denying the grievance.

GRIP Tip:

Present your case at GRIP with the assumption that the Panel members know nothing of the case. Speak slowly and clearly, as if you were explaining the case to a friend who is not familiar with the background of the issue or your department. If your department typically uses acronyms (such as GRIP), go through your presentation ahead of time and spell out the terms (Grievance Resolution Improvement Process) to eliminate confusion.

Assume that your audience at second step and GRIP presentations does not know the importance of the issue to your operations. The Labor Relations Specialist at second step or the GRIP Panel needs to hear how the issue affects your operations specifically. Something that seems minor to one agency may be critical in a different work setting. This impacts the seriousness of the issue and the justification of Management's actions.

For questions, or to provide suggestions for items/topics to be included in upcoming issues of this newsletter, please contact:

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